

Town of Amherst
Zoning Board of Appeals - Special Permit
DECISION

Applicant: Edwin Gentzler
43 Fearing Street, Amherst, MA 01002

Owners: Jenny S. Spencer and Edwin C. Gentzler
43 Fearing Street, Amherst, MA 01002

Date Application filed with the Town Clerk: November 5, 2007

Nature of request: Petitioner seeks a Special Permit to install a second-story deck above an existing porch on a 3-family dwelling, under Section 9.22 of the Zoning Bylaw.

Location of property: 43 Fearing Street, Map 11C, Parcel 108, R-G Zone.

Legal notice: Published in the Daily Hampshire Gazette on November 14 and November 21, 2007, and sent to abutters on November 14, 2007

Board members: Barbara Ford, Jane Ashby and Albert Woodhull

Submissions:

The applicant submitted the following documents:

- A Site Plan, Floor Plan and Elevation entitled “2nd Floor Renovations/Deck”, prepared by Haydenville Woodworking & Design, Inc., dated August 8, 2007;
- Photographs of houses in the vicinity of Fearing Street and downtown Amherst that have second-story porches and decks;
- The Assessors Property Card for 43 Fearing Street, dated 12/26/2006;
- A Site Plan from the Amherst GIS Viewer, showing the property at 43 Fearing Street;
- A Management Plan.

Town of Amherst staff submitted the following documents:

- A plan from the Amherst GIS Viewer showing houses with second-story decks and porches in the vicinity of Fearing Street and downtown Amherst;
- A Memorandum from the Planning Department dated November 19, 2007, commenting on the application.

Site Visit: November 27, 2007

At the site visit the Board was met by Jenny Spencer. The Board observed the following:

- The location of the property in a dense residential neighborhood, close to the University of Massachusetts;
- The large, wood-frame house, constructed circa 1890;
- The small lot, similar in size to other lots in the neighborhood;

- The newly-reconstructed first floor porch, replacing a previously-existing porch that had been demolished;
- The location of the proposed second-story deck, above the first floor porch;
- The second-story windows which will become doors to allow access to the second-story deck;
- The interior of the two-story dwelling unit on the left of the entryway, currently occupied by the owners of the building;
- The narrow driveway on the west side of the property, leading back to a garage and a fenced-in back yard.

Public Hearing: November 29, 2007

At the public hearing, Mr. Gentzler and Ms. Spencer presented the petition. They were joined by their contractor, Lance Hodes, of Haydenville Woodworking. Mr. Gentzler, Ms. Spencer and Mr. Hodes presented the following information and made the following comments:

- The roof on the front porch is deteriorating; the project began with a plan to replace the roof;
- Mr. Gentzler is a professor at the University of Massachusetts and has offices in the house;
- He would like to be able to work on his paperwork outdoors on the porch in the sunshine;
- Mr. Hodes has checked the supports of the roof, including the columns and foundation, and found them to be old and insufficient;
- The foundation has been repaired and the first floor porch floor is now repaired;
- The proposal is to install a deck in place of the porch roof at the second-story level; there will be no cover on the second-story deck; there will be a wooden floor similar to that on the first floor;
- Mr. Gentzler presented photographs of houses in the neighborhood (in the Fearing Street/Lincoln Avenue area) that have similar second-story porches or decks;
- The house is owner-occupied and the present owners plan to retire there;
- There are two apartments on the east side of the house, each of which is on one floor; these were converted in the 1940's;
- There is one apartment on the west side of the house, which includes two stories; this is where the owners live;
- The two apartments on the east are small and usually have one or two graduate students living in them; typically the tenants are long-term renters;
- The house next door, on the west side, has three porches on the back of the house;
- Only the upstairs apartment will have access to the second-story porch;
- The downstairs apartment only has use of the back porch;
- The railing around the first floor porch and the second-story deck will be historically correct and will be the same on both floors;
- The height of the railing will be between 36" and 42" and will comply with Building Code requirements;
- The door on the right side of the house at the first floor level leads to a staircase that provides access to the second-story apartment;
- The first floor apartment is entered from the rear of the building.

Mr. Woodhull expressed concern about the effect of snow on a flat surface (the proposed deck) and stated that the railing should be designed to allow snow to be pushed off the deck surface.

Bonnie Weeks, Building Commissioner, stated that the distance from the floor of the deck to the bottom rung of the railing was determined by the Building Code and was only allowed to be a few inches.

Ms. Ashby asked whether the second-story structures on other houses in the vicinity tended to be covered porches or open decks. She noted that an upstairs deck may become an attractive area to hold parties. This could cause noise problems in the neighborhood. She noted that many of the decks and porches shown in the photographs were much smaller than that being proposed for this house.

Mr. Hodes stated that the deck is proposed to be eight (8) feet wide, the same width as the first floor porch.

Ms. Ashby asked if the applicant would be satisfied with a four (4) foot wide deck. There was discussion about different sizes and configurations of decks and porches. Mr. Gentzler stated that he preferred an eight (8) foot wide deck.

The Board inquired about lighting on the second-story deck. Ms. Weeks noted that there is a requirement for a light by each door that will exit onto the deck. The applicants stated that they have no intention to light the deck other than the lighting required by the Building Code. Ms. Ford noted that any lighting would not be permitted to spill beyond the property line.

Ms. Ashby asked if the construction of the deck would extend the non-conformity of the house or the property. Christine Brestrup of the Planning Department stated that the deck will not extend the non-conformity because it will not project beyond the limits of the existing house, it will not increase building or lot coverage and it will not be closer to the property lines than the existing house.

Bernie Rubenstein of 38 Fearing Street stated that he had been concerned about the porch turning into a party space. He expressed satisfaction with the plan and stated that he would support a condition requiring owner-occupancy of the house.

Elissa Rubenstein of 38 Fearing Street stated that she had been concerned about what the deck would look like and she is concerned about how the next owner will use the deck.

Ms. Ford reiterated that a condition of the Special Permit, if it is granted, would be that one of the units shall be occupied by the owner. It will be an open deck and the applicants will need to come back to the Board if they wish to enclose it, cover it or amend the Special Permit in any other way.

Ms. Ashby asked if the applicant had considered building a smaller deck, centered on the front of the house. The Board discussed this option with the applicant.

Mr. Gentzler stated that parties in this neighborhood tend to occur on the first floor, in the yards of the houses and they spill out into the streets. Parties tend not to be held on the second floor. Mr. Gentzler shares the Board's concern about the future of the house and likes the idea of a condition requiring owner-occupancy. He noted that the architect is sensitive to the architecture of the house and has produced a design that is compatible with the existing architecture.

Ms. Ford asked if the applicants intend to watch television or listen to the radio out on the deck. The applicants stated that they had no plans to use any type of noise-making device on the deck.

Mr. Woodhull noted that even if the second-story deck were smaller the applicant would still need to repair or replace the roof over the first floor porch. There was further discussion about the size of the proposed deck.

Ms. Ford MOVED to close the evidentiary portion of the public hearing. Mr. Woodhull SECONDED the motion. The Board VOTED unanimously to close the evidentiary portion of the public hearing.

Public Meeting – Discussion

At the public meeting the Board discussed its findings and the conditions that would be imposed if the Board were to approve the application.

The Board discussed which unit of the house should be required to be owner-occupied. The Board also discussed the load that the deck would carry if it were covered with snow. Ms. Weeks stated that the deck should be designed for 60 pounds per square foot of live load and 10 pounds per square foot of dead load.

The Board asked about the applicant's plans for clearing snow from the deck. Mr. Gentzler stated that he did not plan to clear snow from the deck. There was further discussion about the need to clear snow from the deck.

Ms. Ashby stated that she would prefer a condition requiring that the largest unit be owner-occupied. There was discussion about requiring that the larger unit be owner-occupied.

The Board discussed the need to regulate lighting on the deck, considering that two of the adjacent properties are vacant and unbuildable, due to the size of the property or the wetness of the land.

Public Meeting – Findings:

Under Section 9.2 of the Zoning Bylaw, Non-conforming Uses and Structures, the Board found that the proposal is not substantially different in character or in its effect on the neighborhood or on property in the vicinity and it is not substantially more detrimental to the neighborhood than the existing non-conforming use or building.

Under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, the Board found that:

10.380 & 10.381 – The proposal is suitably located in the neighborhood in which it is proposed, and is compatible with surrounding uses, because there are other similar second-story decks and/or porches in the neighborhood.

10.383 – The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians because the conditions of the permit will control the exterior lighting and will require that the house be owner-occupied.

10.385 – The proposal reasonably protects the adjoining premises against detrimental or offensive uses on the site because the conditions of the permit require owner occupancy and the property across the street and next door are vacant and unlikely to be developed.

10.390 – The proposal ensures protection from flood hazards because it is built on an existing structure.

10.391 – The proposal protects, to the extent feasible, unique or important natural, historic or scenic features because the deck and railings will be in keeping with the historic architectural style of the house.

10.393 – The proposal provides protection of adjacent properties by minimizing the intrusion of lighting because the conditions of the permit require that exterior lighting be downcast and shielded.

10.395 – The proposal does not create disharmony with respect to the terrain and to the use, scale and architecture of existing buildings in the vicinity because the deck and railings will be in keeping with the historic architectural style of the house and the surrounding houses.

10.397 – The proposal provides adequate recreational facilities, open space and amenities because it increases the outdoor recreational space available to the dwelling units in the house.

10.398 – The proposal is in harmony with the general purpose and intent of the Bylaw because the proposal will promote the health, safety, convenience and general welfare of the inhabitants of the Town of Amherst.

Public Meeting – Zoning Board Decision

Mr. Woodhull MOVED to accept the Findings and Conditions as drafted. Ms. Ashby SECONDED the motion. The Board VOTED unanimously to accept the Findings and Conditions as drafted.

Ms. Ashby MOVED to approve the application with the conditions. Mr. Woodhull SECONDED the motion.

For all the reasons stated above the Board VOTED unanimously to grant a Special Permit to install a second-story deck above an existing porch on a 3-family dwelling, under Section 9.22 of the Zoning Bylaw, at 43 Fearing Street, Map 11C, Parcel 108, R-G Zone, with conditions.

BARBARA FORD

JANE ASHBY

ALBERT WOODHULL

FILED THIS _____ day of _____, 2007 at _____,
in the office of the Amherst Town Clerk _____.

TWENTY-DAY APPEAL period expires, _____ 2007.

NOTICE OF DECISION mailed this _____ day of _____, 2007
to the attached list of addresses by _____, for the Board.

NOTICE OF PERMIT or Variance filed this _____ day of _____, 2007,
in the Hampshire County Registry of Deeds.

Town of Amherst
Zoning Board of Appeals

SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants a Special Permit to install a second-story deck above an existing porch on a 3-family dwelling, under Section 9.22 of the Zoning Bylaw, at 43 Fearing Street, (Map 11C, Parcel 108, R-G Zone), with the following conditions:

1. Exterior lighting shall be downcast and shielded to prevent light from spilling onto adjacent properties or streets.
2. The largest of the three units shall be owner-occupied.
3. The deck shall be built in accordance with the plan and elevation approved by the Board at the public meeting on November 29, 2007.
4. The railing around the deck shall be between 36 and 42 inches in height and shall otherwise meet all of the Building Code requirements.

BARBARA FORD, Chair
Amherst Zoning Board of Appeals

DATE